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C O N F I D E N T I A L SECTION 01 OF 03 BUENOS AIRES 000293

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STATE FOR AMBASSADORS TOM SHANNON, JOHN MAISTO, AND CHARLES SHAPIRO
NSC FOR DAN FISK
TREASURY FOR DAS NANCY LEE
USCINCSO FOR POLAD

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SUBJECT: ARGENTINA: COUNCIL OF MAGISTRATES BILL SHOWS
OPPOSITION'S WEAKNESS

Classified By: Ambassador Lino Gutierrez for Reasons 1.4 (B) and (D).

11. (SBU) Summary: The Lower House of Congress will soon vote on a controversial law to reform the Council of Magistrates that regulates Argentina's judicial system that appears likely to pass despite a united opposition effort against the bill. The proposed law would shrink the size of the Council and likely increase the GOA's power over the judiciary. The political opposition and NGO community are strongly opposed to the reform bill. The bill passed the Senate on December 21, but voting was delayed until February in the Lower House because of the vocal rejection of the proposal by major opposition leaders. The GOA has been winning votes over the past month -- an effort spearheaded by First Lady and Senator Cristina Kirchner -- and appears likely to have the necessary 129 votes to pass the bill when the Lower House takes up the issue on February 22. Independent constitutional experts, while supporting the idea of reforming the Council, do not think the proposed law is a step in the right direction. The GOA argues the new law will make the Council more efficient and will not give the Casa Rosada an "automatic majority" over the judicial system. End Summary.

12. (SBU) The Lower House of Congress will begin debate on February 22 on a controversial proposed law to reform the Council of Magistrates that regulates the Argentine judiciary, with the GOA confident it has the 129 necessary votes to pass the law. The new law would shrink the size of the Council from 20 to 13 in such a way that will increase the relative influence of the Casa Rosada on the Council and eliminate the second minority representation. The bill passed the Senate on December 21, but Kirchner's supporters delayed voting in the Lower House until February because of the universal rejection of the bill by opposition political leaders.

13. (SBU) DETAILS ON THE PROPOSED REFORM: The current council of 20 includes four ruling Peronist Party (PJ) legislators, one Casa Rosada representative, and four opposition legislators -- including two from the second minority -- currently held by Elisa Carrio's Affirmation for an Egalitarian Republic (ARI) and Salta's Renovador Party. The current Council also includes two academics, four lawyers,

four judges and the President of the Supreme Court, who serves as president of the Council. Under the proposed bill, the GOA would keep its five representatives on the council, but the minority representation would shrink to two, eliminating the second minority representatives. The proposed reform would give the GOA a veto over the main Council decisions -- which require a two-thirds approval -- such as the appointment and removal of judges. The reform bill would also eliminate from the Council: one academic, two lawyers, one judge, and the president of the Council -- the President of the Supreme Court. Each segment's representative body chooses the members of the Council. For example, members of the national lawyer associations choose the lawyers on the council through election.

14. (SBU) The Council of Magistrates reform has become a test of wills between the GOA and the political opposition. First Lady and Senator Cristina Kirchner is the main proponent behind the bill, who has been lobbying hard in recent weeks to garner the sufficient Lower House votes to pass the bill. For the first time in Kirchner's presidency, the political opposition united against a proposed Kirchner law, with center-left political leaders like Hermes Binner and Elisa Carrio standing shoulder-to-shoulder in December with center-right leaders Mauricio Macri and Ricardo Lopez Murphy. They were joined in their opposition to the bill by almost the entire NGO community that deals with legal and democratic issues.

15. (SBU) Since December, the Casa Rosada has been able to win over a number of Lower House members to their side to augment the 118-member bloc they currently control. Cristina Kirchner has been able to draw in dissident Peronists, such as formerly staunch Duhaldistas Alfredo Atanasof and Carlos

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Ruckauf, and will likely win the support of the five-member bloc that responds to Cordoba mayor Luis Juez. Ruling party bloc leader Agustin Rossi recently estimated that they have been 130 and 140 votes they can count on to vote for the proposed reform bill. In mid-January, Rossi indicated a willingness to make some adjustments to the proposed law to win its passage. However, it now appears that the GOA plans to pass the bill without any modifications.

16. (SBU) Independent legal scholars, while supporting the idea of reforming the Council, are opposed to the specifics of the GOA's proposed reform. Leading independent constitutional law expert Daniel Sabsay told Poloff that the proposed reform runs counter to the original intention of the Council of Magistrates as a means to limit presidential control over the judiciary. Sabsay noted the Council was created in 1994 as part of larger political compromise between then President Menem and the political opposition to reform the Constitution to allow Menem to run for re-election. The idea behind the Council, Sabsay argued, was to create an independent body to appoint and remove judges to counter the abuses the legal system experienced during Menem's first term, when many Menem cronies were appointed as judges, often with limited qualifications. In practice, Sabsay said the Council has continued to be heavily influenced by presidential interference and has grown into an unwieldy bureaucracy.

17. (SBU) Sabsay argued that any reform of the Council should enhance its independence, rather than making the GOA control of the judiciary easier and more obvious, as he argued the proposed reform would do. When asked about how the proposed Council reform matches with Kirchner's Supreme Court appointments that have received wide praise for their professionalism and general independence, Sabsay said that during the first half of Kirchner's presidency, Kirchner lacked complete control over the political process and faced strong public pressure for Supreme Court reform. Kirchner responded by removing Menem-era Supreme Court judges and appointing competent judges in their places. Now that

Kirchner is in a stronger position politically, Sabsay argued, Kirchner is able to move to tighten his hold over the judiciary through this Council reform. Sabsay compared Kirchner's current efforts with the Council of Magistrates reform bill to the way Kirchner dominated the provincial judiciary when he was Governor of Santa Cruz.

18. (SBU) Constitutional law expert Sabsay argued that although the idea of reducing the number of magistrates on the Council is in principle a good one, there are much more important Council reforms needed. First, Sabsay said that the largely moribund Council training programs for judges should be revitalized and expanded. Secondly, Sabsay argues the number of legislators on the Council should be reduced, or eliminated. Sabsay thinks that having current legislators serve on the council that regulates the judicial branch is a violation of the balance of powers. Sabsay also pointed out that both jobs were full-time positions, making it impossible for legislative Council of Magistrates members to give adequate attention to the legal issues before the Council. Thirdly, Sabsay said the often confusing and overlapping roles of the Supreme Court and the Council of Magistrates needs to be clarified, especially with regards to the management of the judicial budgets. Lastly, the Council should increase its role as a technical advisor in the judicial system.

19. (SBU) The GOA argues the proposed law is designed to make the Council more efficient and that the Casa Rosada will not be able to impose their will on the Council, as they will only have five out of the 13 members. Senate PJ bloc leader Miguel Pichetto, who also is a member of the Council of Magistrates and a constitutional law expert, is the leading legal expert in favor of the proposed law. He told Poloffs during a January 26 meeting that the current Council is too large. "The meetings are heavy -- a lot of never-ending discussions that go on for hours. Decision-making is slow."

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When asked about the reduction of minority representation on the Council, Pichetto said, "There is an excess of minority representation. The two minorities have more representation than the majority. It is an inconsistency. It doesn't represent what was expressed at the polls." When asked about the GOA's ability to veto Council decisions with their 5 members, Pichetto said that the opposition and legal experts on the Council could also veto any unqualified appointment or unwarranted destitution the GOA tried to pursue. "Autonomous sanctioning would not be possible. The Council thrives on consensus. They (members) are from different sectors, and the government does not have a majority or the possibility of blockading with a two-thirds majority."

10. (C) Comment: The February 22 Lower House vote on the Council of Magistrates reform bill will be an important test for the political opposition. If the bill passes without modifications, over what was a united opposition front against it, it will demonstrate the political opposition's complete lack of power and inability to build a coalition that can force the GOA to the bargaining table. Almost all legal experts and NGOs agree the Council of Magistrates should be reformed, but none that are not tied to the GOA think the proposed reform is a step in the right direction. Argentina's weak judicial independence long predates President Kirchner and is more a result of weak democratic institutions than the specific composition of the Council of Magistrates. However, it is difficult to argue that the proposed reform bill will help to promote greater judicial independence. End Comment.

GUTIERREZ